



8.6

**AMENDMENT CIII - REVIEW OF THE  
SPECIAL BUILDING OVERLAY**

**LOCATION/ADDRESS:**

**SPECIFIC AREAS - CITY-WIDE**

**GENERAL MANAGER:**

**CLAIRE FERRES MILES, PLACE STRATEGY &  
DEVELOPMENT**

**PREPARED BY:**

**RICHARD BRICE, INTERIM MANAGER URBAN  
STRATEGY & DESIGN**

**KATRINA TERJUNG, COORDINATOR  
STRATEGIC PLANNING**

**AARON HEWETT, STRATEGIC PLANNER**

**TRIM FILE NO:**

**66/02/226**

**ATTACHMENTS:**

1. Options
2. Background Information: Review of the Special Building Overlay and Flood Projects
3. City of Port Phillip - Flood Management Framework
4. Updated SBO Maps - Amendment CIII
5. Special Building Overlay - Overlay Clause and proposed Schedules (SBO1, SBO2 & SBO3)
6. Draft Explanatory Report - Am CIII
7. Consultation Plan - Amendment CIII Review of SBO

**PURPOSE**

For Council to consider requesting Ministerial Authorisation to prepare and exhibit Amendment CIII to the Port Phillip Planning Scheme, to implement a review of the Special Building Overlay. The Special Building Overlay identifies land subject to inundation (flooding) from overland flows in a 1 in 100 year storm event.

**I. RECOMMENDATION**

That Council:

- I.1 Resolves to prepare Amendment CIII to the Port Phillip Planning Scheme to implement the review of Special Building Overlay by:
  - I.1.1 Updating the planning scheme maps to reflect the revised flood-shape generally in accordance with the Maps at Attachment 4.
  - I.1.2 Introducing new schedules to the Special Building Overlay (Clause 44.05) generally in accordance with Attachment 5.
- I.2 Requests the Minister for Planning to authorise the preparation and exhibition of Amendment CIII to the Port Phillip Planning Scheme, pursuant to Section 8A of the *Planning and Environment Act 1987*.
- I.3 Advises the Minister for Planning that:



- 1.3.1 Pursuant to Section 19 (1A) of the *Planning and Environment Act 1987*, Council considers it impractical to notify all owners and occupiers individually of Amendment C111, and will limit direct notification to property owners.
- 1.3.2 Council will give notice of the amendment in accordance with Section 19(1B) of the Act (including giving notice in a paper circulating within the affected area inviting submissions to be made) and will also undertake a range of non-statutory consultation measures to ensure awareness of the proposed amendment amongst occupiers of affected properties.
- 1.4 Resolves to place Amendment C111 to the Port Phillip Planning Scheme on public exhibition, subject to Ministerial authorisation.

## **2. BACKGROUND**

- 2.1 The Special Building Overlay (SBO) identifies land in urban areas that is liable to inundation (flooding) by overland flows from the urban drainage system. SBO's are based upon the extent of overland flooding that would result from a 1 in 100 year storm event.
- 2.2 Melbourne Water and Council (as the responsible drainage authorities for main and local drains respectively) prepare drainage survey and floodplain data that is then reflected in the planning scheme via the SBO.
- 2.3 The SBO enables drainage and flooding issues to be addressed early in the development process (through triggering a planning permit for buildings and works) rather than only at the later building permit stage.
- 2.4 The purpose of the SBO is to ensure that new development is designed to maintain the free passage and temporary storage of floodwaters, to minimise flood damage and not cause any significant rise in flood level or flow velocity that may adversely affect existing properties. It also seeks to protect water quality.
- 2.5 The effect of the SBO is not to prevent new development. Implementation of the SBO can however, influence the siting of buildings and set appropriate conditions such as raised floor levels to address any flood risk to new development.
- 2.6 The SBO was first introduced into the Port Phillip Planning Scheme in 1998 and covers both main drains (Melbourne Water) and local drains (Council). Melbourne Water and the City of Port Phillip (CoPP) are the responsible drainage authorities for relevant development applications within the SBO.

## **3. KEY INFORMATION**

### **Review of the Special Building Overlay**

- 3.1 Melbourne Water has recently developed more advanced methods of mapping and modelling to determine land susceptible to flooding from main drains. The same mapping and modelling methods have been used by Council to model local drains.
- 3.2 In 2010/11 the City of Port Phillip engaged consultants URS Australia Pty Ltd to produce an updated flood modelling report for the municipality. The purpose of the report was to:
  - Review the extent of the Special Building Overlay
  - Assess the flooding impacts of climate change.



- 3.3 The flood mapping data generated in the study was then used in a collaborative process between the City of Port Phillip and Melbourne Water to develop and agree the revised flood extent to be covered by the Special Building Overlay. (Attachment 2 provides further background to the Review of the SBO.)
- 3.4 The revised flood-shape (boundary of the SBO) results in areas/properties that will be:
- Included in the SBO for the first time
  - Retained in the SBO (noting the extent an individual property is affected by the SBO has changed in some cases), or
  - Removed from the SBO.
- 3.5 The additional areas that would be covered by the SBO for the first time are spread across the Port Phillip municipality. In respect of the local drainage system (Council drains) there are changes across all suburbs. In respect of the main drainage system (Melbourne Water drains) the additional areas are concentrated in St Kilda East and Balaclava (with minor parts of St Kilda and Ripponlea affected).
- 3.6 It is important to note that whilst the URS Study commissioned by Council did model the impacts of climate change on the flood extent (i.e. via predicted sea level rise and increased rainfall intensity) this has not been factored into the final flood shape for the SBO. This is because the primary purpose of the SBO is limited to overland flooding rather than coastal inundation, and current work to further investigate the future impacts of coastal climate change requires completion prior to establishing planning controls. This work will be progressed over the next 2-3 years.
- 3.7 Attachment 3 provides a diagrammatic representation of Council's Flood Management Framework which places the SBO review in this broader context. (Attachment 2 summarises the status of Council and Melbourne Water actions in relation to managing coastal climate change / sea level rise.)

#### **Implementation of SBO Review via Planning Scheme Amendment C111**

- 3.8 Given Melbourne Water and Council have now finalised the revised 'flood shape' (properties subject to inundation in a 1 in 100 year storm event), the SBO in the Port Phillip Planning Scheme needs to be updated.
- 3.9 To implement this work, the following changes to the Port Phillip Planning Scheme are proposed via Amendment C111:
- 3.9.1 Modification of the SBO boundaries on planning scheme maps to reflect the revised flood shape agreed by Melbourne Water and Council (refer maps at Attachment 4). This would:
- Include approximately 10,200 new properties which have now been identified as being subject to inundation.
  - Remove approximately 500 properties from the SBO which are no longer identified as being subject to inundation.
  - Retain the SBO over approximately 17,300 properties which remain subject to inundation. (Note: The extent of the SBO over these properties may be altered.)
- 3.9.2 Introduction of three local schedules to the SBO which distinguish between areas subject to inundation in relation to the 'main' drainage system (Melbourne Water drains) and the 'local' drainage system (Council drains).



Two schedules relate to Melbourne Water drains, with one specifying additional planning permit exemptions for certain areas.

3.9.3 The Schedules will be referred to as SBO1, SBO2 and SBO3 respectively. The planning scheme (SBO) maps define the area/properties to which each schedule applies. The Schedules in the ordinance define permit exemptions and nominate the authority responsible for drainage.

3.9.4 Under SBO1 and SBO3 Melbourne Water would be the relevant drainage authority (and referral authority), with Council the relevant drainage authority for SBO2.

The Special Building Overlay Provision (Clause 44.05) and proposed Local Schedules (SBO1, SBO2 and SBO3) are included at Attachment 5.

3.9.5 SBO3 contains additional exemptions from requiring a planning permit in the SBO for a wider range of development, including where the floor level of a new or extended building is constructed to a minimum of 300mm above the applicable flood level. This would reduce the need to refer applications to Melbourne Water (or the need for a planning permit altogether if the SBO is the only permit trigger), subject to the exemption conditions being met.

3.10 A *draft* Explanatory Report for Amendment C111 is provided at Attachment 6. This provides full details of the purpose and effect of the proposed amendment, and would form part of the exhibition amendment documentation.

3.11 Commencing a planning scheme amendment to update the SBO immediately is recommended. Following the SBO Review, it is now known that the current SBO does not accurately reflect all properties at risk of overland flooding. Council has a responsibility to keep the planning scheme up to date, and the SBO provides an important and transparent statutory mechanism for indicating properties that are subject to inundation in a severe storm event.

3.12 Council needs to formally resolve to seek authorisation from the Minister for Planning to prepare and exhibit Amendment C111.



## FURTHER SUPPORTING INFORMATION

### 4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 4.1 Implementation of the Special Building Overlay supports the Council Plan Objective 3.1 – “*Build resilience through Council action and leadership*” through:
- “*improving water quality*” and
  - “*addressing the impacts of flooding*”.
- 4.2 The SBO implements both the State and Local Planning Policy Frameworks relating to floodplain management, improving the quality of stormwater discharged into Port Phillip Bay, and reducing the effects of storm-water discharge in terms of pollution and flooding.

### 5. CONSULTATION AND STAKEHOLDERS

- 5.1 Section 19 of the *Planning and Environment Act 1987* establishes the statutory process for exhibition of planning scheme amendments. This includes; direct notification to all owners and occupiers of land affected, the opportunity for any affected person to make written submissions, and potential for a review by an independent planning panel.
- 5.2 Under Section 19 (1A) of the Act, the Planning Authority (Council) is not required to give notice to each owner and occupier if it considers the number impractical to notify them all individually. The Act then requires Council to take reasonable steps to ensure that public notice of the proposed amendment and the opportunity to make submissions is given in the area affected by the amendment.
- 5.3 Given the large number of properties affected by Amendment C111, it is proposed to limit direct notification (via letter) to property owners. This would reduce the number of direct letters required from 57,805 to 37,698 (i.e. by approximately 20,100).
- 5.4 As the SBO introduces controls relating to future development on affected properties, the control is of primary relevance to property owners who would undertake such works.
- 5.5 Letters to owners would be tailored to advise whether the property is proposed to be included in the SBO for the first time, remain in the SBO, be removed from the SBO, or where the flood-shape (extent) over the property has changed. They would also inform owners which schedule is proposed to be applied (i.e. SBO1, SBO2 or SBO3).
- 5.6 Occupiers of affected properties will receive information about Amendment C111 through Council’s *Diversity* publication (March/April edition) and a Public Notice in the Port Phillip Leader. The *Diversity* article would advise of proposed Amendment C111 and offer general information on Council’s initiatives relating to flood management/mitigation.
- 5.7 In summary, the following combination of Statutory and Non-Statutory notification of Amendment C111 is proposed:
- Direct Notification (letters) to affected property owners, prescribed authorities and key stakeholder groups/agencies eg Elwood Floods Action Group.
  - Public Notices in the Port Phillip Leader and the Government Gazette
  - Amendment Documents made available for viewing and download (CoPP website/offices & libraries and DTPLI website)
  - An ‘Interactive Map’ on Council’s web-site (showing extent of the overlay and searchable via property address)



- Article in Divercity (March/April edition)
- Fact Sheets (Flooding Overview / Special Building Overlay) and FAQs pamphlet
- Two Information Sessions - where specific individual property information will be made available
- Melbourne Water webpage (in addition to CoPP webpage)
- Telephone enquiry numbers (at both Melbourne Water and CoPP).

- 5.8 All written submissions made to Amendment C111 will be reported to Council for consideration. Submissions that cannot be resolved will need to be referred to an Independent Planning Panel (to be appointed by the Minister for Planning).
- 5.9 Community concern may be raised through highlighting properties / areas at risk of flooding. A Consultation Plan has been developed to ensure clear and consistent messaging. This includes explaining the purpose and effect of the SBO, and also outlining other actions Council and Melbourne Water are taking to mitigate the impacts of and potential for flooding. The Consultation Plan, defining the details of the public exhibition process and key messages, is provided at Attachment 7.

## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 The Consultation Plan will assist in minimising and responding to community concerns, through providing clear information about the purpose and effect of the SBO, and also highlighting other actions being undertaken by Council to minimise flood risk and impacts.
- 6.2 Implementation of Amendment C111 is required to update the SBO and accurately identify all properties at risk of flooding. Any significant delay in implementation would place Council and affected properties at greater risk.
- 6.3 Processing of Amendment C111 will be undertaken in accordance with the requirements of the *Planning and Environment Act 1987*. This includes full public exhibition and (if necessary) a review by an independent Planning Panel. This will provide a fair and transparent process for community involvement.

## **7. SUSTAINABILITY – Triple Bottom Line**

### **7.1 ENVIRONMENTAL IMPLICATIONS**

- 7.1.1 The primary purpose of the SBO is to manage and minimise the impacts of flooding on property and the environment, including on water quality.

### **7.2 SOCIAL & CULTURAL IMPLICATIONS**

- 7.2.1 Increasing the awareness of flood potential and minimising the potential risk of flooding will have public safety benefits.

### **7.3 ECONOMIC IMPLICATIONS**

- 7.3.1 The economic impact of flooding on individuals and communities will be minimised through reduced flood risk. Design requirements arising from application of the SBO may result in some increase in development costs. This would be specific to individual proposals.

### **7.4 FINANCIAL IMPLICATIONS**



- 7.4.1 Council will incur direct costs associated with processing Amendment C111. This includes notification costs, Panel hearing costs and statutory fees (for Ministerial approval). Provision for exhibition has been made in the 2014/15 budget. Panel costs will need to be met in the 2015/16 financial year.
- 7.4.2 Melbourne Water has agreed to share the direct costs associated with exhibition of the amendment and a panel hearing if required.
- 7.4.3 In order to reduce the number of planning permit applications to Council, referrals to Melbourne Water, and enquiries generally, Amendment C111 has been structured as follows:
- Schedules have been developed (SBO1, SBO2, SBO3) to clearly identify which authority is responsible; and
  - Provide for further planning permit exemptions in SBO3.

## **IMPLEMENTATION STRATEGY**

### **7.5 TIMELINE**

- 7.5.1 If Council resolves to proceed with Amendment C111, a request for Ministerial authorisation to exhibit will be made immediately following this meeting.
- 7.5.2 The Minister has 10 business days to make a decision on the request for authorisation, or the amendment is deemed to be authorised.
- 7.5.3 Exhibition of Amendment C111 has been scheduled to commence at the end of February 2015 for a period of 1 month. This timeframe avoids notification over the holiday period and aligns the exhibition period with the distribution of Divercity.
- 7.5.4 Submissions received are required to be formally considered by Council and any objecting submissions must be referred to an independent Planning Panel. A Panel would be anticipated in August / September 2015.

### **7.6 COMMUNICATION**

- 7.6.1 A Council decision to proceed with Amendment C111 will result in formal public exhibition, involving a range of statutory and non-statutory processes as outlined earlier in this report. This will ensure community awareness of the amendment, most significantly by affected property owners.
- 7.6.2 Key messages relating to Amendment C111 (detailed in Attachment 7 – Consultation Plan) are as follows:
- The Special Building Overlay is a planning control that identifies properties subject to flooding in a severe storm event.
  - The SBO triggers a requirement for a planning permit when new development is proposed and this helps to prevent and manage the flood risk to property.
  - The SBO does not prevent new development from occurring, but rather ensures that buildings are sited and designed appropriately.
  - Melbourne Water and Council have recently undertaken updated flood modelling and this has altered the areas identified as being subject to flood risk. An amendment is required to reflect this in the planning scheme to ensure flood risk is well managed.

## **AGENDA - ORDINARY MEETING OF COUNCIL - 9 DECEMBER 2014**



- Council is also undertaking other initiatives to reduce flood risk to our community, including on-going maintenance, drainage system upgrades and specific drainage projects.
- Council works in partnership with other agencies, including Melbourne Water and the State Emergency Services, in relation to flood prevention, response, recovery and mitigation.
- Ensuring our community is well informed about flood risk is very important to Council. Information is available on how to prepare for a flood event, and what to do during and after the event, including who to contact.

### **8. OFFICER DIRECT OR INDIRECT INTEREST**

- 8.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.